

REMARKS

The Office Action mailed on April 7, 2004 has been received and reviewed. Claims 1-20 are in the case. Claims 1-4, 12-14, and 16 were rejected under 35 U.S.C. 102(b) in view of U.S. Patent 3,946,569 to Stuber (hereinafter "Stuber"). Claims 5-10, 11, 15, 17, 19, and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable in view of Stuber and U.S. Patent 6,399,544 to Fairchild et al. (hereinafter "Fairchild") and U.S. Patent 5,048,605 to Toon et al. (hereinafter "Toon").

Rejection of claims 1-20 under 35 U.S.C. § 102(b) and 103(a) as being unpatentable over Stuber in view of Fairchild and Toon

In light of the rejections, it may be instructive to review the claimed invention here. The claimed invention provides an environmentally friendly barrier for protecting poles. The barrier includes an organic bentonite-based material and an outer boundary surface. In addition, a substantial portion of the material remains uncovered or exposed to the air. Support for this subject matter is found in the specification in paragraph 12 where reference is made to a upward slope of the material towards the object. Further support is found in paragraph 30 of the specification. Figure 5 of the specification also supports this amendment as the surface 302 does not extend over the top of the material 104, behind barrier 106. Because the material remains exposed and uncovered, the material provides a means for protecting against environmental damage such as insects, foliage, water, and fire.

Stuber discloses a method and means for installing a post. Stuber includes a post having a plurality of bracelet members and a swelling agent (bentonite). Unlike the claimed invention, Stuber provides that the bentonite is to be used entirely inside the hole for installation purposes. Stuber fails to teach, disclose, or suggest that the material remain exposed or uncovered. Applicant asserts that such teaching is absent from Stuber because the purpose of Stuber is installation not protection of a

pole or object from environmental affects. Figures 5-8, in particular Figure 6 explicitly shows that the swelling agent is meant to reside below ground to facilitate installation, not preservation.

Applicant asserts that the invention of Stuber is limited to subterranean installation and would not preserve the post from environmental damage from fire, foliage growth, and insects.

Applicant has amended claims 1, 13, and 20 to clarify that a substantial portion of the bentonite-material is uncovered, exposed, and may be disposed above ground level for preservation purposes. Therefore, due to this substantial structural difference, applicants respectfully submit that the amended claims 1-20 are patentable over Stuber.

The Examiner's arguments mentioned in the Office Action that include Fairchild and Toon rely principally on Stuber. Since Stuber fails to teach or disclose all the elements of the claimed invention, as discussed above, Applicant asserts that claims rejected based on Stuber, Toon, and Fairchild also fail to teach all the elements of the claimed invention for at least the same reasons. Thus, applicants respectfully submit that claims 1-20 are patentable over Stuber, Toon, and Fairchild.

In summary, Applicant wishes to point out features of the claimed invention that distinguish over the cited references. Specifically, Applicant asserts that the following claimed features are not disclosed in the cited references:

- A barrier having "a substantial portion of the material remains uncovered," as cited in independent Claims 1 and 120.
- An organic bentonite-based "a substantial portion of the bentonite-based material remaining exposed" as cited in independent claim 13.

Applicants have made these amendments to clarify that the organic material remains uncovered and may extend above ground level to afford environmental protection. Therefore, Applicants respectfully assert that claims 1-20 are in condition for immediate allowance.

For the reasons stated above, particularly in light of the clarifying amendments, Applicants assert that claims 1-20 are in condition for allowance and respectfully requests prompt allowance of the pending claims. In the event that the Examiner finds any remaining impediments to the prompt allowance of any of these claims which could be clarified in a telephone conference, the Examiner is respectfully urged to initiate the same with the undersigned.

Respectfully submitted,



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